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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by SBC Communications Inc.	)	
Southwestern Bell Telephone Company,	)	
and Southwestern Bell Communications	)	CC Docket No. 97-121
Services, Inc. d/b/a Southwestern Bell	)	
Long Distance for Provision of In-Region	)	
InterLATA Services in Oklahoma	)	

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF AMERITECH CORPORATION

On April 23, 1997, the Commission, in Public Notice DA 97-864, requested that interested third parties comment on issues raised by the Association for Local Telecommunications Services ("ALTS") in its motion to dismiss SBC Communication's application to provide in-region, interLATA service in Oklahoma. Ameritech Corporation ("Ameritech") hereby submits the following comments opposing the ALTS motion in response to the Commission's request.

1. A Piecemeal Motion Practice Addressing The Many Factual and Legal Issues That May Arise In Connection With A Section 271 Application Is Inconsistent With The Statutory Scheme.

Congress established strict time limits for the 271 application approval process. Pursuant to Section 271(d), the Commission must approve or deny an application "not later than 90 days" after receiving it, during which time it must consult with the Department of Justice ("DOJ") and the applicable state commission. In addition, the Commission has determined (in FCC 96-469) that comments of interested third parties and state commissions must be filed within 20 days, any written consultation by the DOJ within 35 days, and all replies within 45 days of the Initial

Public Notice following submission of the application. Meeting these tight deadlines is certain to strain the resources of the BOCs, other carriers, the DOJ, and the Commission. And any attempt to address the numerous factual and legal issues that may arise in connection with a Section 271 application through a piecemeal motion practice can only exacerbate the problem. The Commission's prescribed comment procedure affords all interested parties a full opportunity to express their views on the factual and legal questions raised by any application, and affords the Commission the opportunity to address those (often-interrelated) issues in a deliberate fashion in the context of the record as a whole. For that reason, Ameritech respectfully submits that the Commission should treat ALTS's motion as early filed comments on SBC's application.

2. A BOC Has A Right To Pursue Track B Relief Unless It Has Received A Timely Request From A Facilities-Based Provider For Access And Interconnection To Be Furnished In Accordance With A Specific Implementation Schedule.

The 1996 Act establishes two bases on which a BOC may seek authorization to provide in-region, interLATA service. Track A (§ 271(c)(1)(A)) permits a BOC to file a Section 271 application by entering into one or more approved interconnection agreements with competing carriers that offer local exchange service to "residential and business subscribers" exclusively or predominantly over "their own telephone exchange service facilities" ("facilities-based providers").[1] Track B (§ 271(c)(1)(B)) permits a BOC to file a Section 271 application if:

1/ In addition, Subparagraph (B) expressly recognizes two situations where, despite having received one or more requests for access and interconnection from one or more such providers, the BOC "shall be considered not to have received any request for access and interconnection" where the State commission certifies that the only requesters have "(i) failed to negotiate in good faith as required by Section 252, or (ii) violated the terms of an agreement approved under Section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement." These two provisions may be invoked (continued...)

- "no such provider has requested the access and interconnection described in subparagraph (A) before the date which is 3 months before the date the company makes its application"; and
- "a statement of the terms and conditions that the company generally offers to provide such access and interconnection [an "SGAT"] has been approved or permitted to take effect by the State commission under Section 252(f)."

Because SBC's compliance with the second requirement, an effective SGAT, is not challenged by ALTS's motion to dismiss, Ameritech's comments will focus on the first requirement, a timely request by a qualifying provider.

The Commission should reject ALTS's contention that a BOC may not pursue Track B relief simply because it has received a request for interconnection from a competing carrier. Section 271(c)(1)(B) does not state that a request for interconnection from any unaffiliated competing provider restricts access to Track B. Rather, it states that a BOC may seek Track B relief where "no such provider has requested the access and interconnection described in subparagraph (A)" (emphasis added). Both the statutory text and legislative history make clear that the requisite "such provider" is the facilities-based provider referenced in Section 271(c)(1)(A).

Certainly, the word "such" must mean something (see Bailey v. United States, 116 S. Ct. 501, 509 (1995) (construction of statute should not make words "superfluous")), and its common meaning is "the same as what has been mentioned" and generally refers "to the last antecedent"

[1/](...continued)
only where an otherwise qualifying Track A carrier has requested access and interconnection but acts in a manner that effectively nullifies that request.

(Black's Law Dictionary 1432 (6th ed. 1990); see also Webster's Collegiate Dictionary 1176 (10th ed. 1993) (defining "such" as "of the character, quality, or extent previously indicated")). Given the structure of Section 271(c)(1), the "such provider" in subparagraph (B) clearly refers back to the antecedent in the immediately preceding subparagraph (A) — namely, a competing carrier offering local exchange service to residential and business customers exclusively or predominantly over its "own facilities."[2]

The legislative history confirms this reading of "such provider." Sponsors of the 1996 Act explained that the phrase "no such provider" refers back to the facilities-based provider described in subparagraph (A): "Subparagraph (B) uses the words 'such provider' to refer back to the exclusively or predominantly facilities based provider described in subparagraph (A)." 141 Cong. Rec., 104th Cong., 1st Sess. p. H 8458 (Aug. 4, 1995) (statement of Rep. Tauzin) (emphasis added). And this understanding was not simply that of one legislator. The Conference Report, reflecting the understanding of both the House and Senate, states that the purpose of Track B is "to ensure that a BOC is not effectively prevented from seeking entry into the interLATA services market simply because no facilities-based competitor that meets the criteria set out in new Section 271(c)(1)(A) has sought to enter the market." H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 148 (1996) (emphasis added). Indeed, the Conference Report expressly states that "a BOC may seek entry under [Track B] * * * provided no

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2/ This meaning of "such provider" derives further support from the statement in subparagraph (B) that the only type of request that precludes a Track B Application is one that seeks "the access and interconnection described in subparagraph (A)." Subparagraph (B) thus expressly incorporates the definitions of subparagraph (A).

qualifying facilities-based competitor has requested access and interconnection" by the appropriate date. Id. (emphasis added).

ALTS disregards the text and legislative history and effectively reads the word "such" out of Section 271(c)(1)(B). Its reading not only does violence to the statutory text and structure, but also leads to absurd results: Suppose, for example, a BOC receives a request for access and interconnection from a facilities-based provider of local exchange service to business, but not residential, customers. Under ALTS's theory, the BOC could not pursue Track B relief because it has received a request for access and interconnection and could not pursue Track A relief because the competing provider is not offering service to residential customers. It is simply absurd to suggest that Congress intended that a BOC facing competition for business customers be forever barred from the long distance market — a barrier that would not exist had the BOC received no request for access and interconnection.[3/]

Thus, ALTS's Track B theory would undermine Congress' purpose of "opening all telecommunications markets to competition." H.R. Rep. No. 104-458, 104th Cong., 2d Sess. 113 (1996) (emphasis added). Congress sought to effect that purpose by providing at least two avenues to the provision of in-region interLATA services by BOCs — one via interconnection agreements with facilities-based providers of telephone exchange service and the other where "no such provider" has requested interconnection. By reading the word "such" out of the Act,

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[3/] ALTS's Track B theory would also enable the entrenched long distance carriers to "game" the Section 271 process by requesting interconnection that does not meet the requirements of Track A but prevents the BOC from using Track B.

ALTS nullifies one of the central means through which Congress sought to achieve its procompetitive objectives.

Furthermore, it is important to keep in mind that only a request for "the access and interconnection described in subparagraph (A)" can restrict a Track B application. Section 271(c)(1)(B). That access and interconnection must be pursuant to an interconnection agreement that includes a schedule for implementing the requested access and interconnection. Otherwise, the provision in Section 271(c)(1)(B) — that a BOC "shall be considered not to have received any request for access and interconnection if the State Commission * * * certifies that the only provider or providers making such a request have * * * violated the terms of an agreement approved under Section 252 by the provider's failure to comply, within a reasonable period of time, with the implementation schedule contained in such agreement" — would be meaningless. Thus, a BOC has a right to pursue Track B relief unless it has received a request from a facilities-based provider for an interconnection agreement negotiated in good faith with a schedule specifically implementing the requested access and interconnection.

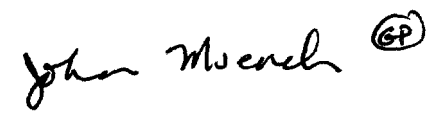
3. Conclusion

Contrary to ALTS's contention (p. 6), there is not a word in the 1996 Act suggesting that Track A is "Congress' preferred mechanism" for authorization to provide in-region, interLATA service. Rather, Section 271 sets out two tracks by which a BOC may seek authorization to provide in-region, interLATA services. The Act makes clear that a BOC may pursue Track B so long as it has not received a request "before the date which is 3 months before the date the [BOC] makes its application" from a facilities-based provider for access and interconnection to

be furnished pursuant to a specific implementation schedule. Section 271(c)(1)(B). ALTS's contrary argument is grounded not in the 1996 Act, but in the narrow interests of its members.

In sum, Ameritech urges the Commission not to entertain motions of the sort filed by ALTS during the pendency of a Section 271 application. But if the Commission elects to address the merits of ALTS's motion at this time, it should reject ALTS's self-serving, distorted interpretation of the statutory requirements for a Track B application.

Respectfully submitted,



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DATED: April 28, 1997